

1 **LAW OFFICE OF WAYNE A. SILVER**

2 Wayne A. Silver (108135)

3 643 Bair Island Road,

4 Suite 403

5 Redwood City, CA 94063

6 Phone: (650) 282-5970

7 Fax: (650) 282-5980

8 Email: ws@waynesilverlaw.com

9 *Attorney for KENNETH Y. KAI and*

10 *TAE K. KAI, Trustees of the Kai Family 1998 Trust*

11 **UNITED STATES BANKRUPTCY COURT**

12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **SAN JOSE DIVISION**

14 In re:

15 MICHAEL HAROUTUN MIROYAN,

16 Debtor.

Case No.: 18-52601-MEH

Chapter 13

RS No.: WS110

Date: January 17, 2019

Time: 10:00 a.m.

Court: 3020, Hon. M. Elaine Hammond

17 **DECLARATION OF KENNETH Y. KAI**

18 I, KENNETH Y. KAI, declare the following under penalty of perjury:

19 1. I am an adult individual over the age of eighteen, have personal knowledge of the
20 matters contained in this Declaration, and am competent to testify thereto. I am the co-trustee of the
21 Kenneth Y. Kai and Tae K. Kai, Trustees of the Kai Family 1998 Trust Dated October 5, 1998 ("Kai
22 Trust") and reside in the County of Santa Clara, California.

23 2. In my capacity as Trustee of the Kai Family 1998 Trust Dated October 5, 1998, I have
24 direct access to, and am personally familiar with, the records pertinent hereto which are kept in the
25 course of the Kai Trust's regularly conducted business activities, and are maintained either at or near
26 the time that the records were created. The Kai Trust maintains documents in an ordinary and
27 accurate manner as part of its regular business practice.

28 3. I make this Declaration in support of the Kai Trust's Motion for Relief from the

1 Automatic Stay.

2 4. Attached hereto as Exhibit 1 is a true and correct copy of the Promissory Note dated
3 May 3, 2010, executed by Hawaiian Riverbend, LLC ("HR LLC") in favor of the Kai Trust, in the
4 principal amount \$540,000.00 ("Note"). This document is kept in the course of the Kai Trust's
5 regularly conducted business activities, and is maintained in an accurate manner, either at or near the
6 time that the document was created. I am informed and believe based on information from the HR
7 LLC Bankruptcy Case (described below) that HR LLC was organized in 2005 in the State of Hawaii,
8 and is a manager-managed limited liability company. HR LLC's manager and sole member is
9 Michael Miroyan ("Miroyan"), the Debtor in this Chapter 13 Bankruptcy Case.

10 5. Attached hereto as Exhibit 2 is a true and correct copy of the Real Property Mortgage,
11 dated April 28, 2010, executed by HR LLC in favor of the Kai Trust, securing the real property
12 located in Waikoloa, Hawaii, identified by Tax Map Key No. (3) 6-8-002-021, and as more
13 particularly described in Exhibit 2 of the Mortgage ("Mortgaged Property") securing the Note. This
14 document is kept in the course of the Kai Trust's regularly conducted business activities, and is
15 maintained in an accurate manner, either at or near the time that the document was created.

16 6. I am informed and believe based on documents in the HR LLC Bankruptcy Case
17 (described below), that in late 2012/2013, HR LLC completed its subdivision of the Mortgaged
18 Property into 3 separate parcels: (a) an approximately 5.95 acre parcel identified with Tax Map Key
19 No. (3) 6-8-002-021 ("Parcel 21"); (b) an approximately 10.75 acre parcel identified with Tax Map
20 Key No. (3) 6-8-002-052 ("Parcel 52"), and (c) an approximately 14.622 acre parcel identified with
21 Tax Map Key No. (3) 6-8-002-053 ("Parcel 53").

22 7. Attached hereto as Exhibit 3 is a true and correct copy of the Partial Release of
23 Mortgage, dated February 4, 2014, executed by HR LLC in favor of the Kai Trust, which released
24 two specific parcels of the Mortgaged Property known as Lots 9-A and 9-B. The remaining property
25 secured by the Mortgage is identified as Tax Map Key No. (3) 6-8-002-053 (Lot 9-C), and
26 hereinafter referred to as "Parcel 53." This document is kept in the course of the Kai Trust's
27 regularly conducted business activities, and is maintained in an accurate manner, either at or near the
28 time that the document was created.

1 8. Attached hereto as Exhibit 4 is a true and correct copy of the First Amendment of
2 Promissory Note, dated August 8, 2013, executed by HR LLC in favor of the Kai Trust (“Amended
3 Note”). This document is kept in the course of the Kai Trust’s regularly conducted business
4 activities, and is maintained in an accurate manner, either at or near the time that the document was
5 created.

6 9. Attached hereto as Exhibit 5 is a true and correct copy of the Promissory Note dated
7 August 7, 2013, executed by HR LLC in favor of the Kai Trust, in the principal amount of
8 \$300,000.00 (“2013 Note”).

9 10. Attached as Exhibit 6 is a true and correct copy of the Real Property Mortgage, dated
10 August 7, 2013, executed by HR LLC in favor of the Kai Trust, securing the 2013 Note with Parcel
11 53. This document is kept in the course of the Kai Trust’s regularly conducted business activities,
12 and is maintained in an accurate manner, either at or near the time that the document was created.

13 11. No payments were ever made by HR LLC under the Note, Amended Note or 2013
14 Note. Specifically, HR LLC did not make the balloon payment that was due on December 1, 2013
15 under the Amended Note.

16 12. HR LLC never cured the default after due notice was made by the Kai Trust, through
17 counsel.

18 13. As a result of HR LLC’s failure to pay the amounts due and owing, the Kai Trust
19 accelerated the entire balance due under the loan documents.

20 14. As of July 1, 2016, \$948,739.72 was due and owing by HR LLC to the Kai Trust,
21 consisting of \$840,000.00 in principal plus \$108,739.72 in interest (5% from 12/1/13 to 7/1/16). The
22 amount due continues to accrue per diem interest at \$115.07.

23 15. On or about May 1, 2015 the Kai Trust filed Civil Action No. 15-1-0164K against HR
24 LLC in the Circuit Court of the Third Circuit State of Hawaii (“Civil Action”) seeking to foreclose
25 on Parcel 53.

26 16. The Civil Action was stayed when HR LLC filed for Chapter 11 bankruptcy on or
27 about April 4, 2016 in the U.S. Bankruptcy Court for the District of Hawaii, Case No. 16-00348 (the
28 “Bankruptcy Case”).

1 17. HR LLC confirmed a Second Amended Plan of Reorganization dated October 6, 2016
2 (“Plan”) in the Bankruptcy Case. A copy of the Order Confirming Second Amended Plan of
3 Reorganization dated October 6, 2016 (incorporating the Plan) is attached as Exhibit 7.

4 18. The Plan classified the Kai Trust Claims in Classes 1(a) and 1(b), and provided for the
5 sale or auction of Parcel 53 on or before February 28, 2018.

6 19. HR LLC failed to comply with the Plan and failed to take the necessary steps to sell
7 Parcel 53. As a result the Bankruptcy Case was dismissed on or about February 2, 2018 pursuant to
8 the Order Dismissing Case attached as Exhibit 8. In dismissing the Bankruptcy Case, the Bankruptcy
9 Court found:

10 Cause exists to dismiss the case because the Debtor is admittedly in
11 material default of its obligation under the Plan. Debtor failed to
12 conduct a sale of the properties and later failed to submit them for
13 auction. Debtor’s counsel made it clear at the status conference on
14 January 8, 2018, that Debtor does not intend to comply with the Plan.
15 Additionally, Mr. Miroyan’s outrageous email to counsel for Kai
16 creditors and his other inappropriate statements in court filings ^{[fn.}
17 omitted] demonstrate that he should not be administering the estate as a
18 fiduciary for the creditors and other parties in interest. (Ex. 8, p.4)

19 20. On or about March 21, 2018 Kai Trust’s motion for summary judgment and
20 interlocutory decree of foreclosure was granted in the Civil Action. A copy of the Order Granting
21 Plaintiffs’ Renewed Motion for Summary Judgment and for Interlocutory Decree of Foreclosure,
22 Filed December 17, 2015 (“MSJ Order”) is attached as Exhibit 9. The MSJ Order appointed Andrew
23 Kennedy as the foreclosure Commissioner.
24

25 21. I am informed and believe that on or about August 9, 2018 Miroyan conveyed Parcel
26 53 from HR LLC to himself for no consideration. This was done without notice to or approval from
27 either me or anyone else affiliated with the Kai Trust. A copy of a printout from the County of
28 Hawaii Real Property Tax Office on Parcel Number 680020530000 (“Parcel 53) is attached as
Exhibit 10.

 22. Attached as Exhibit 11 is the Fact Sheet prepared by the office of the foreclosure
Commissioner, setting the sale date for Parcel 53 on November 26, 2018, the same date as Miroyan
filed this Chapter 13 bankruptcy case, which prevented the foreclosure.

23. Neither HR LLC nor Miroyan ever made any payments to the Kai Trust on the Note, Amended Note, or 2013 Note.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief. Executed this 27 day of December, 2018 at San Jose, California.

/s/ Kenneth Y. Kai

Kenneth Y. Kai